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CURRENT TOPICS

The New Judicial Appointments

THE appointments to the Court of Appeal of Sir JOHN SINGLETON and Sir ALFRED DENNING, which we noted last week, will be welcomed by the profession. Both are learned in the best sense, with successful experience behind them at the Bar and on the Bench. Lord Justice Singleton was educated at Lancaster School and Pembroke College, Cambridge, of which he was later made an Honorary Fellow, and took silk in 1922. He was appointed a judge of the King's Bench Division in 1934. Lord Justice Denning was a Demy of Magdalen, a double First of Oxford University (mathematics and jurisprudence), Eldon Scholar and prize student of the Inns of Court. He became a High Court judge in 1944. Some pleasant exchanges took place when DEVLIN, J., and PEARCE, J., took their seats in the King's Bench Division and the Divorce Division respectively on 14th October. Mr. CARTWRIGHT SHARP, K.C., in welcoming the former, said: "We all hope that for many years you will dispense justice, either in your present or in an even more exalted position." Mr. Justice Devlin said that he was gratified that it was Mr. Cartwright Sharp who had voiced the good wishes. "I remember, even if you do not, Mr. Cartwright Sharp, that I started my career as your pupil. I shall not attempt to hold you responsible for any judicial errors." Mr. Justice Pearce was welcomed by Mr. WILLIAM LATEY.

Mr. C. M. Pitman, K.C.

THE many ties between the legal profession and the world of athletics are recalled by the death, on 13th October, of His Honour C. M. PITMAN, K.C., well-known to the legal world as Official Referee of His Majesty's Supreme Court of Judicature from 1933 to 1945, but better known to the general public as a great oarsman. He was the son of an Edinburgh Writer to the Signet, and the foundations of his success both in the courts and on the river were laid at Eton, where he won both the pulling and the sculling, and at New College, Oxford, where he won the University sculls, pairs and fours and rowed Head of the River. In 1892, 1893, 1894 and 1895 Oxford beat Cambridge in the boat race, and Pitman rowed in those years for his University, including two years as stroke. At Henley he won the Grand twice for Leander. He coached the Olympic crew in 1920, and the Leander crew that won in Toronto in 1923. He was called to the Bar in 1897 and his success may be gauged by the fact that he was appointed Assistant Judge-Advocate of the Fleet in the 1914-18 war and Judge-Advocate of the Fleet in 1924. He became Recorder of Rochester in 1924 and Chairman of the Berkshire Quarter Sessions in 1925.

Mr. Montague Ellis

THE profession has suffered a great loss in the death on 7th October of Mr. MONTAGUE ELLIS, partner in Messrs. Ellis, Peirs & Co., of Albemarle Street, London. Quite apart from his successful and distinguished work in the legal profession, to which he was admitted in 1888, Mr. Ellis did magnificent work for Toc H, of the founder of which he was a close neighbour in the country, in drafting its charter and in other ways. He will also be remembered for the part he played professionally in the sale of *The Times* and the *Daily Mail* after Lord Northcliffe's death. Mr. Ellis was a man of simplicity and kindness, whose loss will be deeply felt.

Sales of Development Values

THE Chairman of the Central Land Board, Sir MALCOLM TRUSTRAM EVE, K.C., repeated on 14th October, this time to the National Federation of Property Owners, his warning at The Law Society's Provincial Meeting, that buyers of land should not pay for a claim on the Treasury's £300,000,000 fund. He added that the sale of such a claim was not a crime, "but in some cases nowadays it is getting extremely near dishonesty." People found it difficult to accustom themselves to the idea of selling at existing values. Some owners had withdrawn land from sale; others would sell only on the pre-Act basis. Others offered to sell their claims as part of the sale of their land, with the claim priced at 100 per cent. And some people—mostly purchasers, which made it worse—were buying and selling in complete ignorance of the Act. Development charge was payable only when development occurred, and the Board had no intention of allowing such charges to be paid and then hawked around for sale and resale. Purchasers who paid higher values should realise that the higher prices they had paid would be ignored and compensation would be based upon the true existing value. If land were to be sold for reasonably immediate development the Central Land Board could offer to agree on the development charge with either buyer or seller; that gave a choice of selling the land inclusive or exclusive of development charge. But if development was not reasonably immediate, the sale should always be at existing use value, and the purchaser ran a serious risk if it was not. An article on this subject appears at p. 593 of this issue.

Planning and Charitable Purposes

THE Ministry of Town and Country Planning recently drew the attention of ecclesiastical and charitable organisations, and persons charged with the management of land held on charitable trusts, to the provisions of s. 85 of the 1947 Act. Section 85 is applicable only to land held for ecclesiastical or

charitable purposes on 1st July, 1948. It divides land into two classes: land which is used directly for the purposes of the charity, and land which is used purely as a source of revenue. These two classes are referred to officially as "functional land" and "investment land" respectively. In the case of functional land, no payment will be made from the £300,000,000 under Pt. VI of the Act, and no development charge will be imposed on any development of the land as long as it remains functional land. On its ceasing to be functional land (e.g., on sale or diversion to commercial use), development charges will not be imposed unless the value of the land for its new use exceeds the value for the use prevailing in the neighbourhood, if planning permission for the change has been obtained before it ceases to be functional land; i.e., the charity can reap the development value of the land up to the level of that use. Investment land in the first instance, the Ministry states, receives no special treatment under s. 85; i.e., a claim may be made under Pt. VI for loss of its development value, and development will be liable to development charge. Under subs. (5) of the section, however, the Minister may direct that investment land shall be treated as if it were functional land, if he is satisfied that it was held for charitable purposes on 1st July, 1948, and that it is reasonable to treat the land as functional land in view of any proposals submitted to him for its future use. If, however, such a direction is given and the land ceases to be held for charitable purposes before it is put to a functional use, a full development charge may be levied when it is developed. An application under subs. (5) may be made at any time before 1st July, 1951. If the application is unsuccessful, a payment under Pt. VI of the Act is still admissible. All claims for a payment under Pt. VI must be submitted to the Central Land Board by 31st March, 1949. Ecclesiastical and charitable organisations are therefore advised, in their own interests, to submit a claim in good time, even if they also contemplate applying for a direction under s. 85 (5). If they do not take this precaution, they may find themselves denied the benefit of s. 85 and also debarred from a payment under Pt. VI. Applications under s. 85 (5) should be made on form C.T.L., which may be obtained from The Secretary, Ministry of Town and Country Planning, 32 St. James's Square, London, S.W.1, or from any of the Ministry's regional offices.

Builders' Near-Ripe Land

THE Central Land Board on 15th October announced an amplification of their recent pamphlet on builders' near-ripe land, S.I.A./N.R. (*ante*, p. 492). Pointing out that the intention of the builders' near-ripe scheme is not that claims on the £300,000,000 fund should be sold by a builder by an assignment of his rights, the Board stated that if builders' near-ripe land—that is to say, land which a builder has already claimed as his near-ripe ration or intends to claim as such in the future—is sold or leased before being developed, near-ripe treatment will not be granted if the land is sold coupled with any assignment of the right to the payment due in respect of the land from the £300,000,000 fund. Any land sold on these terms will be excluded from the builder's near-ripe ration. If a builder desires to sell or lease near-ripe land before it is developed, the land should be disposed of either at existing use value, or, if immediate development is contemplated and development charge has been determined by the Board on the application of the builder himself, at a price inclusive of development charge. This is the latest of a series of recent steps in furtherance of the official policy (discussed at p. 593 of this issue) that land should not change hands at a price above its existing use value.

Change of a Company's Name

A NEW simplified procedure for effecting a change of the name of a company registered under the Companies Acts has, we learn, been introduced. It has in the past been necessary to approach the Insurance and Companies Department of the Board of Trade in the first instance to ensure that the proposed new name would secure approval. It was then necessary to pass a special resolution and file one copy with the Registrar of Companies, forwarding

another to the Board of Trade, who then gave their final consent in writing. This consent had also to be filed with the Registrar, who thereupon entered the new name on the register and issued a certificate of change of name. This somewhat cumbersome and lengthy procedure has now been streamlined and application should in future be made direct to the Registrar. We understand that it is the intention of the Registrar, when advising that provisional consent is granted, to call for a copy of the special resolution for filing when passed, together with a sum of 10s. for fees on filing the resolution and the final consent when issued. A considerable reduction in the time necessary to effect a change of name may well result when the new procedure is working smoothly.

More about Photographic Copies

OUR paragraph in a recent issue (*ante*, p. 532) about the use of photographic copying apparatus in solicitors' offices has evoked some interesting comments from a correspondent who has found such a machine very useful, particularly for copying large plans. His letter, however, draws attention to the fact that the licence issued by the Ordnance Survey for tracing plans, for an annual fee of 5s., does not cover photographic copies, and that in consequence a detailed return has to be made of all such copies of Ordnance maps and a royalty paid. The possibility of an arrangement with the Ordnance Survey for payment of a compounded fee similar to that applicable to tracings was therefore suggested by our correspondent to The Law Society, and we understand that negotiations between the Director-General, Ordnance Survey, and a number of interested professional bodies including The Law Society are now taking place. Although no decision has yet been reached it seems probable that in due course a more rational system of accounting for the royalty will be evolved.

A Correction

We regret that in our obituary notice of the late Sir Richard Pinsent (*ante* p. 561) it was incorrectly stated that he was until last year senior member of the Council of The Law Society. In fact he retired from the Council in 1938.

Recent Decisions

In *Stone v. Stone*, on 11th October, the Court of Appeal (BUCKNILL, COHEN and DENNING, L.J.J.), held that an order made in a Divorce Commissioner's private room dismissing a husband's petition for divorce was not valid, as it offended against the fundamental rule that the whole hearing of a case must take place in open court. The court ordered a fresh trial before another judge in London. The Commissioner had seen counsel in his private room, and counsel came out with his brief marked "discretion refused." The order drawn up showed that the petition had been dismissed on the ground that it had not been sufficiently proved.

On 14th October (*The Times*, 15th October), the Court of Criminal Appeal held that s. 38 (2) of the Criminal Justice Act, 1948, which provided that six weeks or less of the time during which an appellant was specially treated should be disregarded in computing the term of his sentence, meant in effect that when a prisoner gave notice of appeal or made application for leave to appeal the time spent in prison did not count as part of his sentence if the application or appeal was heard and dismissed within six weeks. If, however, his application for leave to appeal had come before a single judge of the court and been dismissed and the prisoner had desired that the case should be further considered by the full court, the date of the hearing by the single judge would ordinarily be considered the governing date for that purpose. The time which must elapse between the time of the dismissal of the application by the single judge and the dismissal of the application by the full court would not count as part of his sentence, for the fact that the application had already been dealt with and refused by the judge would ordinarily be considered a good reason for the court's exercising the discretion which the section gave it.

SALES OVER EXISTING USE VALUE

THE CENTRAL LAND BOARD'S POLICY—I

IN the course of his by now well-known letter on some of the results of the Town and Country Planning Act, 1947, published in *The Times* of 19th August last (see 92 SOL. J. 473), Mr. Charles Greenwood pointed out that "the professed object of the Act to secure that land shall be freely transferred at its existing use value is just not being achieved."

One of the main methods provided for securing that land could be bought at existing value was the power of compulsory purchase conferred by the Act on the Central Land Board, by means of which the Board could come to the rescue of a prospective purchaser faced with a demand for a price above existing use value by purchasing it compulsorily and then reselling it to him. The Board, however, had hoped not to have to exercise this power and, as Messrs. Potts & Ball stated in a letter published in the issue of this journal for 18th September last (92 SOL. J. 530), it seemed that the Board were not prepared to assist in securing the object of the Act referred to by Mr. Greenwood.

The attitude of the Board has now been modified and an exchange of letters between their Chairman, Sir Malcolm Trustram Eve, K.C., and the Minister of Town and Country Planning has been made public, from which it is apparent that the Board are now prepared to exercise their powers.

In his letter to the Minister, after referring to Mr. Greenwood's letter and the widespread disregard of existing use value, Sir Malcolm wrote:—

"As a first step (and in the earnest hope that further steps on a large scale will not be necessary) the Board have decided to ask your approval, in principle (within the limits of their present vote), for the purchase by the Board under s. 43 (1) by agreement of land where the Board is satisfied that the land is deliberately being offered for sale or has been bought at a price considerably above existing use value, including cases where this is coupled with an assignment to the purchaser of the vendor's claim on the £300,000,000. Your further approval would, of course, be sought on each individual case, when a full statement of the facts and circumstances would be sent to you. In appropriate cases the owner would be informed that the Board would not wish to purchase the land if an undertaking were given that his land would be sold at existing use value. Reference would also be made to the powers of the Board for compulsory purchase."

In his reply the Minister wrote:—

"It is, I absolutely agree, vital to the operation of the Town and Country Planning Act that land should be bought and sold at existing use value . . ."

"I am in entire agreement with the policy proposed in your letter and I hope that the Board will exercise to the full extent necessary the powers conferred upon them by s. 43 of the Act. When the Bill was before Parliament, it was expressly stated that these powers had been included for this very purpose."

"I shall, of course, have to consider on its merits any particular proposal that the Board may submit to me for my approval under the section."

As the vast majority of sales of land with development value have taken place, and probably are still taking place, at prices well above existing use value, this statement of policy is of the greatest importance, and it is now proposed to examine its implications, bearing in mind that the reader will be called upon to advise not only prospective purchasers, who are concerned to pay the smallest price they can, but also vendors, including trustees and limited owners, who will be concerned to obtain the highest price they can.

In the first place, there is nothing at all in the Act which requires that in transactions between private individuals land should be sold at existing use value, nor is this one of the objects of the Act as expressed in its preamble. The framers of the Act appear to have assumed, incorrectly as it has turned out, that the requirement for payment of development

charge would drive the market value of land down to its existing use value. This may be deduced from the curiously worded governing principle for the determination of development charge set out in the Development Charge Regulations (S.I. 1948 No. 1189), namely: "Development charge shall be determined so as to secure, so far as is practicable, that land can be freely and readily bought and sold or otherwise disposed of in the open market at a price neither greater nor less than its value for its existing use." An additional factor which the framers may have thought would drive market value down is the amendment of the law relating to assessment of compensation on compulsory purchase coupled with increased powers of compulsory purchase. Indeed, the main sanction to establish existing use value, in the event of the market failing to adopt it, is the power of the Board under s. 43 of the Act to buy land compulsorily. However this may be, an owner may sell his land at whatever price he chooses without committing a criminal offence.

Furthermore, having conveyed his land at a price in excess of existing use value and received the purchase price, there is nothing to compel him to surrender any part of the price to the Government or the purchaser. It is necessary to mention this because there has been some suggestion in press reports of Sir Malcolm's speech to the Brighton meeting of The Law Society that the Board had power to re-open past transactions and force the vendor to disgorge any excess over existing use value. There is no such power in the existing legislation. The suggestion may have originated from the passage in Sir Malcolm's letter to the Minister quoted above which states that the Board ask for the Minister's approval for the purchase by the Board under s. 43 (1) where the Board are satisfied that the land is deliberately being offered for sale or has been bought at a price above existing use value. Whatever the italicised words mean, and they are important, they cannot mean that the vendor who has received the excess price must give it up. Presumably what they do mean is that a purchaser who has paid an excess price over someone else's head may have the land taken away from him at existing use value, thereby making him suffer a financial loss. To take the case referred to in the letter from Messrs. Potts and Ball quoted at the beginning of this article: their client refused to pay more than existing use value and they applied to the Board for the Board to exercise their powers. As it happened, at that time the application was unsuccessful, but presumably it would now be successful. In the meantime, however, another person comes along and buys the land at a price over the existing use value. It seems that the Board could compel the intermediate purchaser to sell to them at existing use value and would then re-sell to the original prospective purchaser. If this is so, it represents a serious pitfall for purchasers paying an excess price, for they will seldom be able to find out if any previous inquirer is applying to the Board. Alternatively the Board may simply be aiming at developers who buy land at more than existing use value for resale at a price in excess of this value. These may be caught by the Board on their attempts to resell.

One may wonder what the Board would do if an owner put land up to auction, for, even though he took care to point out that its existing use was agricultural only, he might well expect, if it was suitable for building, that the highest bidder would bid considerably more than existing agricultural value. Would the Board step in and take the land away from the successful bidder? Again, suppose a purchaser, having bought land by private treaty at a price in excess of existing use value, immediately after exchange of contracts sends the contract to the Board as evidence of the vendor's deliberate intention to contravene the spirit of the Act, will the Board step in and by their compulsory powers secure the vesting of the land in themselves, or take possession of it, in sufficient time to prevent the vendor from completing his contract, and then resell it to the purchaser at its existing

use value, and would the court in such a case order the return of the deposit? It does seem very desirable that the Board should clarify their intentions in cases where land *has been bought* above existing use value.

The decision of the Board to exercise their powers is hardly likely to deter owners from selling land at the highest price they can, for they have little to lose individually from asking for a price over existing use value. If they receive it they can keep it, and it is only the purchaser who may suffer. It may, however, become the practice for every prospective purchaser, asked for a price higher than existing use value, to appeal to the Board, and it seems unlikely that anything

less than a wholesale exercise of the Board's powers will produce the result the Board desire. It remains to be seen, however, whether the Board's machinery can move quickly enough and with sufficient certainty to give satisfaction to prospective purchasers, who may find that to get the land they desire the simplest way is to pay a price higher than existing use value.

In the second part of this article it is proposed to discuss the compulsory purchase machinery available to the Board and the assessment of compensation on a purchase by the Board, including the question what is existing use value?

R. N. D. H.

NOTES ON THE DEATH DUTIES—II

3. Liability to succession duty

ESTATE duty is imposed whenever property passes or is deemed to pass on a death, irrespective of the destination of the property. In contrast, both legacy duty and succession duty are taxes on the *acquisition* of property as the result of a death. Of the two, legacy duty takes priority: where legacy duty is chargeable, succession duty is not to be charged "in respect of the same acquisition of the same property" (Succession Duty Act, 1853, s. 18). The result is, in brief, that succession duty attaches to real property (including leaseholds); to legacies and annuities charged on or payable out of real property (Customs and Inland Revenue Act, 1888, s. 21); and to personal property comprised in a settlement *inter vivos* governed by British law. The rates depend on the relationship of the "successor" to the "predecessor" (from whom he derives his interest), and the present rates (on the assumption that the events giving rise to the charge occurred after 15th April, 1947) are as follows: husband or wife, lineal descendants and lineal ancestors, 2 per cent; brothers and sisters and their descendants, also charities, 10 per cent; all other persons, 20 per cent. (Finance Act, 1947, s. 49). (There is a small additional duty in certain cases.)

There are three exemptions of great practical importance for small estates.

First, under s. 16 (3) of the Finance Act, 1894, as amended by the Finance Act, 1946, and s. 50 (1) of the Finance Act, 1947, if the net value of the estate on which estate duty would otherwise be payable (excluding property settled otherwise than by the will of the deceased) does not exceed £2,000, *the estate* is not aggregated with other property, and is exempt from estate duty, legacy duty and succession duty. (But succession duty may become payable on *settled* property in consequence of the death.)

Secondly, as regards persons who would be liable to the 2 per cent. rate, there is exemption from legacy duty and succession duty if either—

(a) the principal value of the property on which estate duty is payable does not exceed £15,000 (excluding property in which the deceased never had an interest, and also property of which he was not competent to dispose, and which passed on his death to persons other than his wife or husband or a lineal ancestor or descendant); or

(b) the total benefit received, together with other benefits received from the same person, does not exceed £1,000; or £2,000 in the case of a widow or child (including a child who has attained twenty-one)

(Finance (1909-10) Act, 1910, s. 58 (2), proviso, as amended by Finance Act, 1947, s. 50 (2)).

Thirdly, as regards any person, even a stranger liable to the 20 per cent. rate, there is exemption from both duties if the total benefit received from the same person on the same death does not exceed £100 (Finance Act, 1947, s. 50 (2) (a)).

There is marginal relief in all these cases if the limits are slightly exceeded (Finance Act, 1914, s. 13, and Finance Act, 1947, s. 50 (3)).

A further point to be noted, before discussing the conditions of liability, is that personality (moveable property), though located in Britain, is not liable to succession duty if it is comprised in a foreign settlement, i.e., a settlement governed

by foreign law (*Duke of Marlborough v. A.-G.* (No. 1) [1945] Ch. 78). It is immaterial that the predecessor was domiciled in Britain.

Succession duty law is more intricate than the other branches of death duty law, chiefly because it has had to be applied to rather complex settlements. But once the leading principles are grasped, there is little difficulty in applying it to everyday cases. Liability to the duty is established not by the occurrence of a death, but by the creation of a "succession," i.e., a right to succeed to property on or after death. The person who provided the property is the "predecessor"; the person who is to take it on the occurrence of a death—not necessarily the death of the predecessor—is the "successor." Once a right is established to succeed to property on a death, either immediately or after an interval, or even for a contingent interest, there is a "succession," and there is a latent charge for the duty, though the death may not occur until long afterwards, and the duty is not actually payable until the "successor" becomes entitled to possession of the property or income (Succession Duty Act, 1853, s. 20). Thus successions arise in the following cases:—

(a) By his marriage settlement, A creates successive life interests in favour of himself and his wife, after which the property is to be held in trust for his children on attaining twenty-one (here the succession is created long before the predecessor's death on which, in this case, it depends).

(b) B effects an insurance on his life for the benefit of his wife and pays the premiums during his lifetime.

(c) C settles estates on his son for life, with remainder in tail to his son's heirs (here there is a succession in favour of the heirs, expectant on the son's death, but C is the predecessor).

(d) D devises land by his will to his eldest son (here the succession comes into existence at the same time as the duty becomes payable, i.e., on the death of D, the predecessor).

(e) E, by his will, gives an option to one of his tenants to purchase the freehold of his farm on favourable terms (there is a succession to the extent of the benefit).

(f) F covenants with G that his executors will pay to G a sum of money six months after F's death (this is brought into charge because "money payable under any engagement" is expressly included in the definition of "personal property" in s. 1 of the Succession Duty Act, 1853).

In the more technical words of the Act (s. 2), there is a succession whenever there is—

(i) a "disposition" (including an agreement for the payment of money) under which a person becomes beneficially entitled to any property or income on the death of any other person, "either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation"; or

(ii) a "devolution by law" (i.e., on a will or intestacy) of any beneficial interest in property, or the income thereof, upon the death of any person, to any other person, "in possession or expectancy."

One consequence of the latent charge for duty, which may be in existence long before the death causes duty to be payable,

is that duty cannot normally be avoided by any dealings with the interest in the meantime. Thus if A has a life interest and surrenders it to his son who is entitled in remainder, duty is still payable on A's death (and in the case of such a surrender, the duty could be commuted in advance). It would be otherwise if entirely new limitations were set up under a power of appointment having priority to the interests of A and his son, or if the son died during the lifetime of A and his interest never took effect in possession.

Where the successor alienates his expectant interest, e.g., by sale or settlement, it is expressly provided that the charge for duty is to fall on the assignee exactly as it would have fallen on the original successor (Succession Duty Act, 1853, s. 15; *Lord Braybrooke v. A.-G.* (1861), 9 H.L. Cas. 150). In cases of this nature, attempts to establish that the successor, by his own act, could set up a "new succession" and so displace the old one have been unsuccessful (*Baron Wolverton v. A.-G.* [1898] A.C. 535).

In all cases, large or small, it is a sound test to ask whether there is a "disposition" or "devolution" creating a "succession" as defined by the Act, and whether it has taken effect in possession, or would have done so but for some act of the successor accelerating or alienating the succession.

As stated above, the rate of duty depends on the relationship of the successor to the predecessor, not to the person on whose death he became entitled. An alienation of the succession does not change the rate.

4. Insurance policies: estate duty

Where the deceased keeps up a policy on his own life, which forms part of his estate on his death, the policy "passes" on his death under s. 1 of the Act of 1894 and full duty is payable.

Where a third party (such as a son, or a creditor) keeps up a policy on the life of the deceased, out of funds which were not provided by the deceased, there is no "passing" of the property and no liability to duty. (But duty is payable on the death of the third party.)

Between these two extremes there is a wide variety of cases.

Under s. 2 (1) (c) of the Act of 1894, read with s. 11 (1) of the Customs and Inland Revenue Act, 1889, the policy moneys are "deemed" to pass if the policy was wholly kept up by the deceased for the benefit of a donee (whether a nominee or assignee); if the policy was *partially* kept up by the deceased, the money is deemed to pass in proportion to the premiums paid by him.

If the policy is effected by the deceased and assigned to some other person, who afterwards pays the whole of the premiums, there is no liability under this provision (*Ld. Adv. v. Fleming* [1897] A.C. 145). Similarly, if the deceased paid part of the premiums *after* the assignment, only these

premiums are taken into account in calculating what proportion of the property is deemed to pass, not premiums paid beforehand (*Ld. Adv. v. Inzievar Estates* [1938] A.C. 402). Of course, if a policy is assigned within five years before the death, it may be caught by the provisions with respect to gifts *inter vivos*: in such a case the donee is allowed to deduct premiums paid by him from the policy money.

Difficult questions arise where a policy is kept up out of funds provided by the deceased, e.g., by the trustees of a settlement. In *Barclays Bank v. A.-G.* [1944] A.C. 372, the House of Lords decided that such policies were not "kept up" by the deceased and were outside the charge under s. 2 (1) (c). This decision is overruled by s. 76 of the Finance Act, 1948, under which, where the death occurs on or after 7th April, 1948, money arising under a policy effected, or kept up, under a settlement made by the deceased, is brought within the charge. There is an exception if it can be proved that the funds used for the purpose were not provided by the deceased, or by some other person under a reciprocal arrangement.

The charge under s. 2 (1) (c) relates to the whole policy money (or to the whole of the proportion attributable to premiums paid or provided by the deceased).

There is an alternative charge under s. 2 (1) (d) where an annuity or other interest (which includes policy money: *A.-G. v. Dobree* [1900] 1 Q.B. 422) is purchased or provided by the deceased, to the extent of the beneficial interest arising or accruing on his death. Here the amount of the charge is limited to the beneficial interest arising: thus if the deceased gave away a fully-paid policy more than five years before his death there is apparently no liability, because the beneficial interest arises at once; again, if there is a life interest in the money, duty is only payable on the life interest. In most of the settlement cases liability admittedly arose under this head: the dispute centred on the applicability of s. 2 (1) (c), under which duty is levied on the full amount without limitation. By recent amendments (Finance Act, 1939, s. 30; Finance Act, 1943, s. 43) cases have been brought within the scope of the charge under s. 2 (1) (d) where the deceased has not "provided or purchased" the interest directly, but has done so indirectly by providing funds for the purpose. Where the donee has received property from the deceased, the onus is upon him to prove that the receipt of the property was unconnected with the effecting of the insurance. Thus it will be difficult for a wife, for example, to claim exemption on a policy effected on her husband's life, unless she had ample funds in her own right.

When a doubtful case arises, it is necessary to ask: (1) is it caught by s. 2 (1) (c)? (2) If not, is it caught by s. 2 (1) (d), and to what extent?

J. H. M.

Divorce Law and Practice

SOME NOTES ON CONNIVANCE

THE somewhat exceptional facts that occurred in *Woodbury v. Woodbury* (1948), 92 SOL. J. 470, gave rise to a case that demonstrated with unusual clarity the principles upon which the law regarding connivance rests. Before considering that case in any detail, it would be well to remind readers of the effect of a previous case upon which, to a certain extent, that decision is based: This case, one in which much of the law of both collusion and connivance was carefully considered, is *Churchman v. Churchman* (1945), 89 SOL. J. 508. The facts of that case need not be set forth here; it was one of those cases, happily not frequent in the English courts, in which the petitioner and co-respondent entered into a series of negotiations over the head of the wife respondent in a manner that savoured more of competing nations trying to wrest trade concessions from each other than Englishmen taking part in a domestic dispute. Lord Merriman, P., in his judgment clarified two main points on connivance. First, he held that, even though the Matrimonial Causes Act, 1937, imposed upon the petitioner the burden of satisfying the

court of the absence of connivance, this did not amount to the reversal of the presumption of law against the existence of connivance. This presumption is merely a particular case of the general rule of law that evil is not to be presumed against anyone. All that the Matrimonial Causes Act, 1937, meant was that, as soon as the question of connivance was raised and the court had before it circumstances which might reasonably suggest that connivance was a possibility, then, but not before, the petitioner was bound to satisfy the court that connivance did not exist. Secondly, he laid down the proposition that it was of the essence of connivance that it preceded the event, and that in general the material event was the inception of the adultery and not its repetition, although it was possible that the facts might be such that connivance at the continuance of an adulterous association showed that the petitioner must be taken to have connived at it from the outset. This latter proposition was in reality one that was of long standing, originating in *Gipps v. Gipps and Hume* (1864), 11 H.L. Cas. 1, where it was in effect

decided that a husband cannot have intercourse while tolerating his wife's adultery, and then later, when satisfied that he has lost her affections, set about trying to obtain a remedy in divorce.

To turn now to *Woodbury v. Woodbury*, the facts were these. In 1940 the wife discovered that her husband had been carrying on (for a considerable time) an adulterous association with the governess who had been engaged to look after the son of the marriage. When she first heard of this association, she wrote letters to her husband and to his mistress which, on their literal meaning and when divorced from the circumstances in which they were written, amounted to a licence to the husband to continue his adulterous intercourse, which in fact the husband did.

It was, however, clearly shown, both from the nature of the letters themselves, though they were not those of an hysterical woman, and from the medical evidence called on her behalf, that at the time the wife wrote these letters she was in a very nervous and hysterical state and suffering seriously from the shock of the discovery of her husband's unfaithfulness. Subsequent to the writing of these letters, and after a reconciliation had been effected between the husband and wife, the wife took her son to America on account of the risk of bombing at that time and remained in America until 1947, when she returned. There was no evidence to show that the wife knew while she was in America that the husband had continued the adulterous association with the governess. In 1947 the wife petitioned for divorce on the grounds of the husband's adultery in 1940, 1941 and 1947. The adultery was admitted, but it was contended on behalf of the husband that the wife had connived at his adultery by reason of the letters she had written on first discovering the association, and also by the fact that she must have known that the adultery would have continued after she left for America. The court had little difficulty in holding that there had been no connivance with regard to the period subsequent to her going to America, for there was no evidence that the wife knew of the continued adultery until she caused inquiries to be made through solicitors on her commencing proceedings in 1947. There was, further, no indication that the husband had ever told her of adultery during this period.

But the alleged connivance by reason of the letters written in 1940 presented a slightly greater difficulty. For a proper understanding of this case the letters should perhaps be quoted to show their general tenor. The letter to the husband was brief and ran thus: "Terms for a peaceful settlement: (1) You share your son with his mother from this day on. (2) You continue with Sylvia as her friend and lover. (3) Is it (*sic*) clear that you can still have both James and Sylvia, but on different sides of your life . . ." The letter to the governess was of a similar nature but couched in less curt terms. It was argued by counsel for the husband that these letters amounted to a licence to the husband to continue the association, but although this may have been their literal meaning, the court held that that was not how the wife had intended them to be treated. Thus it was that the court had to consider whether in these circumstances the wife was in law guilty of connivance. So far as connivance is a question of fact, the judge of first instance held that the wife was not guilty of connivance. Bucknill, L.J., in his judgment, considered that this problem really resolved itself into two

parts. (1) What are the circumstances in which a wife, who discovers that her husband is carrying on an adulterous intercourse, is guilty of connivance if he continues the adulterous intercourse? (2) How far is the motive of the wife material when considering her conduct towards her husband which may appear to tolerate the continuance of adulterous intercourse? The learned lord justice, in dealing with the first of these problems, refers to the judgment of Lord Merriman in *Churchman v. Churchman*, *supra*, where the learned President pointed out that it was of the essence of connivance that it preceded the event. Bucknill, L.J., then continued, "In the present case once the adulterous intercourse had started without any fault on the part of the wife . . . if she, with a corrupt intention then behaved in such a way as to promote or encourage the continuance of the adultery . . . I think she would be guilty of connivance, but, in my opinion, 'corrupt intention' would mean in this case that the wife showed by her conduct that she willingly consented to the continuance of the adultery. If she showed by her conduct that she greatly desired it to cease . . . and took the best steps available to her, as she thought, to stop it, I do not think she was guilty of connivance although at the time she took no active steps to leave her husband or to divorce him and even suggested to him to continue with Sylvia as her friend and lover . . . the maxim *volenti non fit injuria* seems to me inapplicable in a case such as this."

This, it would seem, puts the problem clearly, and in the result, it is respectfully suggested, the whole matter is reduced to a question of fact, and the test in a case where a spouse is faced with the situation that met the wife in this case is whether or not that spouse did all that could be reasonably expected to be done in order to stop the association continuing, bearing in mind all the circumstances as they existed at that time. One of the circumstances that must be remembered is that a spouse may wish more than anything else to keep the marriage together, and that therefore it will not always be connivance if he or she does not immediately take steps to leave the other or to start divorce proceedings. In fact, as was shown, it may even be that it is reasonable to do what was done in this case if it seems at the time that that is the only way of achieving the objective.

With regard to the second point of law stated by Bucknill, L.J., it is clear that to some extent he dealt with the question of motive in dealing with the first point as shown above. Somervell, L.J., in his judgment was perhaps rather more explicit on the question of motive. He too quoted Lord Merriman, P., in *Churchman v. Churchman*: ". . . the issue is whether on the facts of the particular case the husband was or was not guilty of the corrupt intention of promoting or encouraging either the initiation or continuance of the wife's adultery . . ." and the learned Lord Justice went on to say, "where the petitioner is in a distraught and hysterical condition . . . I think he or she is entitled to have his or her conduct considered as a whole over a reasonable period of time." In other words, it is of the essence of connivance that there should be a "corrupt intention." The existence or otherwise of that corrupt intention is, of course, a question of fact. We are back, are we not, with Bowen, L.J., comparing a man's mental activities with the state of his digestive organs?

P. W. M.

Company Law and Practice

NOTICES OF MEETINGS UNDER THE COMPANIES ACT, 1948

It is a matter of common knowledge that a general meeting of a company has no power to pass any resolution outside the scope of the notice convening it, and that consequently an invalid notice may invalidate the proceedings at the meeting (*Normandy v. Ind, Coope & Co.* [1908] 1 Ch. 84). It is therefore of particular importance to practitioners to be

well acquainted with the provisions of the new Act on the subject. These provisions of the Act may be divided into three classes: those which provide for an entirely new type of notice which is called "special notice," those which merely extend the requirements of the old Act, and the provision relating to proxies. Let us deal with them in that order.

Special notice is required by the Act to be given in the case of certain ordinary resolutions, which demand the due consideration of those concerned, but which, being ordinary resolutions, do not require to be passed as special resolutions by a three-quarters majority. The Act requires special notice to be given in three instances: (i) on the removal of a director before the expiration of his term of office (s. 184 (2)); (ii) on the appointment or reappointment of a director over the age limit (s. 185 (5)); and (iii) on the appointment of a person as auditor other than a retiring auditor, or on a resolution providing expressly that a retiring auditor shall not be reappointed (s. 160 (1)). The object of special notice is really threefold: first, in the case of a resolution proposed by a member, to give the board of directors time to communicate its views on the proposals to the members of the company; secondly, in the case of a resolution proposed by the board, to give members ample time for consideration; and thirdly, in the case of the removal of a director or the non-reappointment of an auditor, to give the director or auditor concerned the time to make representations in his defence.

There are two elements in special notice: (1) there is the notice to the company of the intention to move the resolution in question; this must be given to the company not less than twenty-eight days before the meeting at which it is to be moved. (2) There is the notice which must be given by the company to its members; this notice should be given at the same time and in the same manner as the notice of the meeting. Thus, in the case of the annual general meeting or a meeting at which a special resolution is to be proposed, twenty-one days' notice should be given, and in the case of any other meeting, fourteen days. If, however, it is not practicable to give notice of the resolution at the same time as the notice of the meeting, s. 142 of the Act provides that notice must be given "either by advertisement in a newspaper having an appropriate circulation, or in any other mode allowed by the articles, not less than twenty-one days before the meeting." There is also an important proviso to s. 142, namely, that if, after special notice of the intention to move a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice, although not given within the required time, shall be deemed to have been properly given. This proviso was almost certainly inserted so as to prevent any board of directors from avoiding the passage of an unpopular resolution by hiding behind the technical defect of insufficient notice.

In the case of resolutions for the removal of directors or the non-reappointment of auditors, the company must, on the receipt of the notice, immediately forward a copy thereof to the director or auditor concerned (ss. 184 (2), 160 (2)). If the director or auditor then makes representations in writing and requests that they be circulated to members, the company must (unless it is too late to do so)

(i) state in the notice of the resolution to the members that representations have been made; and (ii) send to every member to whom notice of the meeting is sent a copy of these representations. If the representations are received too late or if the company fails to send out copies of them to members, the director or auditor concerned may require them to be read out at the meeting. Protection is, however, given in ss. 160 and 184 against the abuse of these rights to secure needless publicity for defamatory matter. Either the company or any aggrieved party may apply to the court for an order that the representations need not be sent out or read out at the meeting.

Let us now turn to the provisions of the new Act which have extended the requirements of the 1929 Act, and to the provision relating to proxies. Under the 1948 Act twenty-one days' notice must be given for calling the annual general meeting as well as for a meeting at which a special resolution is to be passed; any other meeting of a company having a share capital now requires fourteen days' notice, as opposed to seven days under the 1929 Act (s. 133 of the 1948 Act). In each case "days" means "clear days" (*Re Hector Whaling* [1936] Ch. 208), and accordingly notices should be posted at least twenty-three days and sixteen days respectively before the holding of the meeting. As to the statutory meeting, s. 130 of the Act also provides that the statutory report must be sent to every member of the company at least fourteen days before the holding of the meeting. Section 133 also provides that meetings called by shorter notice than that required by law may be validated if the members agree. In the case of the annual general meeting, all the members entitled to attend and vote must agree, and in any other case a majority in number of such members, being "a majority together holding not less than ninety-five per cent. in nominal value of the shares giving a right to attend and vote at the meeting" (or, in the case of a company not having a share capital, together representing not less than ninety-five per cent. of the total voting rights at that meeting of all the members). With regard to this provision attention is called to the fact that the requisite majority is ninety-five per cent., not of the votes, but of the shares giving a right to attend and vote.

Under the 1929 Act there were no statutory provisions (apart from Table A) relating to proxies. Section 136 of the 1948 Act now provides, *inter alia*, that, in every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy (or, where it is allowed, one or more proxies) to attend and vote instead of him, and that the proxy need not be a member of the company. It should be noted that these provisions are mandatory and not permissive and consequently are not subject to the articles of association.

S.

A Conveyancer's Diary

THE NATIONAL CONDITIONS OF SALE

SEVERAL readers of this journal have asked for comments on the latest (14th) edition of the National Conditions of Sale, which was issued in May, 1948. The publishers supply a set of notes with the print of the conditions, in which attention is drawn to the changes made since the last edition; but these notes will not have reached those practitioners who habitually use some other forms of conditions of sale, and who may, therefore, suspect that more should be read into the new matter which now appears in the National Conditions than is justified by the amendments and additions made.

Apart from a certain amount of rearrangement there are three or four changes of substance, the most important of which is the insertion of a new condition (cl. 6) dealing with the position of the parties if the purchaser is let into possession

before completion. The immediately preceding clause provides for the payment of interest on the purchase-money at the rate of 4 per cent. per annum in the event of completion being delayed, with certain safeguards for the purchaser. This clause remains unchanged except in two respects. The rate of interest payable has been reduced from 5 per cent. to 4, an amendment which accords with the normal practice to-day, and a purchaser who is let into possession pending completion is expressly debarred from the alternative course, otherwise available to a purchaser in the event of completion being delayed except through his own default, of placing the balance of his purchase-money on deposit with a bank and so avoiding the payment of interest.

Clause 6 itself provides that a purchaser let into possession before actual completion shall pay interest at 4 per cent. from

the date of taking possession, and shall also assume all liability for repairs and outgoings from that date; but a purchaser in this position will be entitled to the rents and profits from the same date, and the taking of possession is not to affect his right to investigate or object to the title. A note in the explanatory memorandum states that the payment of interest on the purchase-money under this clause is "not considered to create a controlled tenancy within the Rent Restrictions Acts: see *Francis Jackson Developments, Ltd. v. Stemp* [1943] 2 All E.R. 601." It is obviously a matter of the greatest importance that a purchaser let into possession pending completion should not be presented with the opportunity of taking advantage of these Acts if the sale should go off, and it is reassuring to have this opinion from counsel who was responsible for the preparation of this edition of the conditions. The decision in *Stemp's* case is not, however, easy to grasp, and a word of warning will not, I think, be out of place. The National Conditions are primarily intended to provide for a sale by auction, and on such a sale it is unusual for any special conditions which may govern the transaction to vary or impinge on any of the printed conditions. This is not always the case where the National Conditions are annexed, for convenience, to a contract of sale by private treaty. If any special condition is drawn dealing with entry into possession pending completion the effect should, in my opinion, always be very carefully considered, in conjunction with the provisions of cl. 6, in order to minimise the risk of a situation arising such as occurred in *Stemp's* case (where a controlled tenancy was, in fact, spelled out of an agreement for possession pending completion). Similarly, care should be taken if a purchaser is let into possession after contract under an ancillary agreement, whether the contract incorporates the National Conditions or not.

A purchaser let into possession pending completion will, of course, have to vacate the premises if the purchase is not completed and, to meet this possibility, cl. 6 (2) provides that on discharge or rescission of the contract possession of the premises in proper repair shall forthwith be given up to the vendor. The words "discharge or rescission" call for some comment. "Rescission" in this context would seem to refer to the vendor's right (provided for in cl. 7 (6) of these conditions) to rescind if the purchaser insists on any objection or requisition which the vendor is *bona fide* unable or unwilling to remove or comply with. "Discharge" would cover both discharge by mutual agreement and discharge by breach. There is, however, a third possibility. Clause 23 (1) of the

conditions provides that, if the purchaser fails to complete his purchase in accordance with the conditions, the deposit will become forfeit and the vendor may re-sell the property. If the vendor re-sells under this clause he necessarily affirms the contract and the contract cannot, it is submitted, be said to be discharged, at least in the usual sense of that expression. It is, therefore, apparently necessary for a vendor who wishes to take advantage of cl. 23 to serve some form of notice on a purchaser in possession in order that the premises shall be vacated, and reliance should not be placed on the automatic provisions of cl. 6 (2) in such a case.

So much for the position of the purchaser in possession pending completion under the new conditions. The next matter of importance is cl. 12 (4), which provides that the purchaser shall be deemed to buy with full notice of the existing use of the property for the purposes of the enactments relating to town and country planning. This is all right so far as it goes, but regular readers of this "Diary" will need no reminding that, in my view, the clause does not go far enough. It must be remembered, however, that this edition of the National Conditions was issued some months before the Town and Country Planning Act, 1947, came into force, and before the spate of regulations, which have made it possible to see the new planning code "in the round," had burst upon us. My own preference, in any contract for the sale of land, is for somewhat ampler provision in respect of the Act.

Clause 23 (2) of the conditions, which provides that, if the vendor re-sells on the purchaser's failure to complete, any loss caused by expenses of and incidental to the sale and the re-sale shall be made good by the purchaser, is now expressly confined in its operation to sales by auction. This has been the usual practice, and it is no longer necessary to amend the condition to make it conform.

These are the main changes made in the latest edition of the conditions. A new clause (No. 14, dealing with easements on the severance of property formerly in common ownership), and amendments in cl. 16 consequential on the passing of the Agriculture Act, 1947, should also be noted. These apart, many of the clauses have been re-drafted and split up, and as a result are a great deal easier to read and grasp. The only omission of any consequence is that of a clause providing for the event of the premises being requisitioned pending completion, but a marginal note on the first page of the printed conditions serves as a reminder in this respect.

"A B C"

Landlord and Tenant Notebook

DAMAGES FOR BREACH OF LESSOR'S REPAIRING COVENANTS

THE subject of my article is one on which there appears to be painfully little authority, especially when one compares its volume with what is available in the case of breaches by tenant covenants. In a few cases, it is true, tenant covenantees have been provided with remedies other than or additional to that of a claim for damages. The tenant of a controlled dwelling-house, old control, may be able to suspend payment of increases on obtaining an order of court if the dwelling-house is unfit for habitation, or a sanitary authority's certificate if it is not in a reasonable state of repair (Increase of Rent, etc., Act, 1920, s. 2 (2); Rent, etc., Restrictions Act, 1923, s. 5 (1)). If a dwelling-house within the limits of the Housing Act, 1936, s. 2, is unfit for habitation when the term commences the tenant may throw up the tenancy, for the statute imports not only an undertaking to keep the house fit, but also a condition that it is in that state at the commencement of the tenancy. The common law recognises a similar implied condition in the case of furnished lettings. Disrepair constituting a nuisance may be dealt with indirectly, under the Public Health Acts (see 92 Sol. J. 333, 369). In the same way a tenant farmer may now be able to

obtain some redress by complaining to the County Agricultural Executive Committee that his landlord is failing to comply with the principles of good estate management, as a step towards supervision and directions under ss. 12 and 14 of the Agriculture Act, 1947.

But in cases where these remedies or partial remedies are not available the tenant has only a right to damages. The first reaction of a normal, healthy tenant is, no doubt, a determination to withhold rent until the repairs are done; and many a tenant has had to be disillusioned and instructed as to the difference between independent and interdependent obligations (I think that the most recent occasion was *Taylor v. Webb* [1937] 2 K.B. 283 (C.A.)). True, there is an Elizabethan authority according to which a tenant may carry out the repairs himself and deduct the cost from rent: *Beale and Taylor's Case* (1591), 1 Leon. 237, also reported as *Taylor v. Beal* (1591), Cro. 222; but it does not appear ever to have been followed.

But the authorities show that a tenant may carry out the repairs himself and recover their cost from the covenantor; indeed, if the tenant is in a position to effect the repairs, the

general principle by which an aggrieved party is under a duty to minimise damages would appear to oblige him to take this course. *Green v. Eales* (1841), 2 Q.B. 225, better known as an authority on the absolute nature of the covenant and on the meaning of "external," illustrates this. The defendant landlord had covenanted to keep in repair the external parts of a semi-detached house, and when the local authority, empowered by a local Act, demolished the house next door and left the party wall exposed to the elements a good deal of damage was occasioned to the demised premises. The plaintiff tenant required the defendant to carry out the necessary repairs, and the defendant refused on the ground that he was not liable for the consequences of operating a statute and on the ground that nothing external had been affected; the plaintiff repaired the house himself, and its condition was such that he had to move to other premises for some five months, adapt them for the purposes of his business and then reinstate them, while the repairs were being carried out. Of his claim, some £270-odd related to the cost of the repairs and architect's fees and some £210-odd to rent and taxes paid in respect of, and to alterations and restoration of, the other premises. He was held entitled to recover the former, but not the latter. "We are of opinion," said Denman, C.J., "that the defendant was not bound to find the plaintiff another residence whilst the repairs went on, any more than he would have been bound to do so had the premises been consumed by fire." The concluding part of this sentence may well have been intended merely as a *reductio ad absurdum*, but that it may have more significance than at first suggests itself will presently appear.

For, in connection with this matter of consequential or special damages, I believe a certain amount of harm may have been done by the way in which *Torrens v. Walker* [1906] 2 Ch. 166 was cited in *Hewitt v. Rowlands* (1924), 93 L.J.K.B. 1080 (C.A.), the modern decision usually referred to as laying down that the measure of damages is the difference between the value of the premises to the lessee in their unrepaired condition and their value in the state in which they would have been if the lessor had, on receipt of notice of disrepair, carried out his covenant.

Torrens v. Walker was a case in which a covenantee tenant failed to recover damages because the premises were old and worn out and repair was impossible, part of *Proudfoot v. Hart* (1890), 25 Q.B.D. 42 (C.A.), and *Lister v. Lane* [1893] 2 Q.B. 212 (C.A.), being applicable. In Warrington, J.'s judgment we find: "It is contended that those two cases did not apply to a covenant by a lessor. But, in my judgment, there is no difference in principle." *Hewitt v. Rowlands* was a case in which a statutory tenant of a house built without a damp course sued the covenanting landlord, and the assessment of damages was referred to a District Registrar who considered that he was to be guided by what was the actual expense occasioned to the tenant and the actual damage sustained by his furniture. It was when correcting this view of the situation that a Divisional Court

referred to *Torrens v. Walker* and the statement that the "principle" was the same. This may be so, but in practice those applying the principle find themselves dealing with very different kinds of facts, and one imagines that in the case of *Hewitt v. Rowlands* the Registrar must have ultimately found himself trying to assess the plaintiff's expectation of life.

The point of comparison between *Torrens v. Walker* and *Hewitt v. Rowlands* was, indeed, not so much effect as scope; and when one considers other cases in which consequential damages have been claimed by tenants, one may wonder whether, in spite of the comparison drawn and of the disallowing of the cost of living elsewhere in *Green v. Eales*, there may not be cases in which a covenantee might be awarded damages including such expenses. In *Griffin v. Pillet* [1926] 1 K.B. 17 the plaintiff, who had sustained serious injuries owing to the collapse of steps, was awarded £1,200. In *Porter v. Jones* (1942), 112 L.J.K.B. 173 (C.A.), a county court judge had acceded to an argument that the tenant, an old lady, ought either to have repaired the kitchen ceiling herself or to have refrained from using the kitchen, and had awarded damages not including anything for the injuries she had suffered when it collapsed; the Court of Appeal held that this was wrong: the old lady was not a surveyor, and it was not unreasonable of her to continue using the kitchen though she knew the ceiling needed repair. These and cases in which a tenant has been awarded damages representing his liability towards his family who have no direct claim (in *Cavalier v. Pope* [1906] A.C. 428 this part of the claim succeeded) have no counterpart in the law of dilapidations.

It is for these reasons that I would suggest that the decision in *Green v. Eales* depriving the plaintiff of his claim for the cost of living elsewhere should not be treated as being of general application. The reference to fire shows, in my submission, that Denman, C.J., had very much in mind the defence that the damage was due to circumstances over which the defendant had had no control, namely, operations carried out under a local Act of Parliament; and if the plaintiff in *Porter v. Jones* had not only refrained from using the kitchen, but had gone to stay in lodgings till the ceiling was repaired, it seems consistent with the trend of authorities that she would have been able to include the expense in her claim. Indeed, if we are to be confronted with the *Torrens v. Walker* sauce-for-the-gander proposition, it may be mentioned that in *Proudfoot v. Hart* (referred to in that case, as we have seen, in another connection) the landlord had been awarded £5 by the referee in respect of inability to let while repairs were being carried out; and the Divisional Court's view, "if the tenant was bound to do the repairs to the extent of £47, he might very properly be ordered to pay £5 as the loss which was sustained by the landlord through having his house empty while it was being repaired," was not adversely commented upon by the Court of Appeal.

R.B.

THE TOWN AND COUNTRY PLANNING REGULATIONS

ADDRESS BY SIR THOMAS SHEEPSHANKS, K.C.B., K.B.E.

ON 30th September, Sir THOMAS SHEEPSHANKS, K.C.B., K.B.E., Permanent Secretary to the Ministry of Town and Country Planning, addressed members of the Chartered Auctioneers' and Estate Agents' Institute on the Regulations, including Orders, issued by the Ministry under the Town and Country Planning Act, 1947.

Sir Thomas, in opening, stressed the fact that the Ministry had taken the fullest opportunity of consulting outside bodies on the drafts of the various regulations and said that, within limits, they really had tried to make the regulations as practicable as possible. He then referred to the various sets of regulations, discussing some in a certain amount of detail.

Of development he said: "What is development? Previous planning legislation never attempted to define it meticulously. Now that you have got planning control more closely administered and now that it is linked with development charge people want

to know what falls within and what without the term 'development,' because if they go wrong about this they may have the development removed without compensation and may be fined twice the amount of the development charge. The first safeguard is provided in s. 17, which enables anyone in doubt to get the matter determined. It is easy to be wise after the event, but I am rather doubtful that it was wise to enact s. 17 in its present form. Here it is application to the planning authority with appeal to the Minister, and you can argue that what is development in one place is development in another and that all decisions should be made by the Minister. If the local authority says something is not development, then it is not and that is the end of it; but, if they say that it is, there is an appeal to us, and I do contemplate we shall follow the practice we have done in planning appeals and from time to time issue lists of decisions. In view of the Ministry's appellate jurisdiction quite

obviously it would not be proper for me to answer any questions you might ask, for example, as to whether taking a lodger is development. I will, if I may, suggest that sometimes it is unwise to ask questions which are too ingenious and that what the eye does not see the heart does not grieve over."

Sir Thomas then referred to the definition of "development" in s. 12 of the Act and the Use Classes Order (S.I. 1948 No. 954) made under s. 12 (2) (f), which provides that a change of use within any class specified in the Order shall not be deemed to be development. Of this Order he said: "There are a few points arising on this Order which I should like to mention because of there having been some misunderstanding. It is odd that it should be necessary to point out that the freedom to change is only within each class and not from one class to another. The second point is that the inclusion of a number of purposes within the class does not mean that a change from one to another would, but for the Order, constitute development. It depends whether the change is a material one. No one can be dogmatic at this stage. If a change from one use to another within the class would, but for the Order, be a material change in use, it is declared not to be development. The third point is that the inclusion of two uses within the class does not stop a local authority imposing a condition. Thus in the case of permission for Class 2 (use as an office) the planning authority might wish to allow some special sort of office in a special area, but not to allow the premises to be used for any kind of office you can think of, and they are entitled to impose a condition limiting the use to a particular type of office. The fourth point is that the Order attempts to deal only with the most common forms of change. There may be others which will become established and we shall have to deal with them as they arise."

He explained the difference between this Order and the similar Order (S.I. 1948 No. 955) made under the Third Schedule to the Act as follows: "I need only explain that the classes in the Third Schedule Order are identical with the classes in the Use Classes Order. The Use Classes Order can be revoked or amended and, if this happens, the Third Schedule Order, which cannot be revoked or amended after the appointed day (s. 111 (4)), stands as a great protection for owners. Suppose, for example, Class 2 of the Use Classes Order (use as office) was deleted by amendment, well then the owner of property which was used as an office on the appointed day could still change it to another sort of office without development charge. He might have to get planning permission, and, if this was refused, he would be entitled to compensation. As long as the Use Classes Order remains unaltered the second one is unnecessary, but the second one is a great protection for owners."

From these two Orders Sir Thomas passed to the General Development Order (S.I. 1948 No. 958) and the Development Charge Exemptions Regulations (S.I. 1948 No. 1188), of which he said: "When once you have got established by s. 12 and the Use Classes Order that certain uses do constitute development, is planning permission needed and is development charge payable? I want to get to the planning side. I will say nothing more about the Exemptions Regulations except to emphasise the fact that if under the G.D.O. development is permitted it is not also

exempt from development charge. The G.O.D. and the Development Charges Exemptions Regulations are not identical; there are differences. They are not just an arbitrary arrangement; they are on a perfectly sound logical basis; thus development authorised by local Act of Parliament (Class XII of the G.D.O.) is permitted because the planning aspect has been considered by the Parliamentary Committee which passed the Act and it need not be considered again by the planning authority, but it does not follow that development authorised by a local Act ought to be exempt from development charge. We have tried in the G.D.O. to strike a balance between necessary control and freedom to allow developers to carry out developments. We know that some of the planning authorities think we have been too lenient to developers. The Minister is ready to modify things if necessary. Article 4 enables modifications to be made. Perhaps I ought to mention that the classes of permitted development are modified by limitation of access to and obstruction of roads. This is because the Restriction of Ribbon Development Acts have gone. Although many agricultural buildings are normally permitted by the Schedule, application for permission has got to be made if the development involves access to a road or the obstruction of road vision, but the development would be considered from that aspect only."

After mentioning a number of other regulations, Sir Thomas described the Advertisement Regulations (S.I. 1948 No. 1613), of which he said: "This is a comprehensive code to ensure uniform control of advertising in the interests of amenity and public safety, but they do not give the power to exercise any sort of censorship over the subject-matter to which the advertisement relates. The underlying idea is that all advertisements require advertising permission, but the permission is of two kinds—for certain classes of advertisement it is given automatically by the regulations themselves, but all the others require the permission of the local authority."

Advertisements that are permitted by the regulations are those the display of which is not clearly against amenity; they are essential. The whole story is set out in reg. 12. Most things likely to be of interest to the ordinary citizen are covered, subject only to limitation as to size of letters and height above ground level. Other advertisements require prior permission of the local planning authorities and they are particularly the larger and more conspicuous forms of advertising—hoardings and illuminated signs, etc. Advertisements displayed since the 1st August, 1948, are subject to control, but advertisements existing before that date are given a period of grace with a maximum of three years. After that they have not automatically got to come down; they can stay there until they are challenged. In areas defined by local planning authorities as areas of special control, stricter conditions will be enforced. These areas may be either rural areas or urban areas worthy of special protection. The effect of defining an area as an area of special control will be to eliminate all forms of commercial advertising."

In conclusion, Sir Thomas remarked that in making the various regulations the Ministry had had the convenience of the developer in mind and they would continue to bear him in mind. One of the points of the regulations was that they could be more easily amended than the Act.

FALSE WITNESS

THE report of the committee which has been considering the revision of the law of defamation is shortly to be published.* It is to be hoped that the reforming zeal of this Government will stop short of attempting to over-simplify a subject that has given rise to some of the most interesting cases in the books, and provided scope for fine distinction and subtlety of a high order. It would be a thousand pities if the rich red blood of this offspring of the common law of England were to be diluted and impoverished by a watery infusion of statutory rules and definitions. The subject is one which is eminently suited to the empirical method of treatment, for defamation is as old as human iniquity, and its forms as variable.

One of the earliest recorded examples of defamatory conduct is ascribed by the book of Genesis to the wife of Potiphar, an official of the Egyptian court. The fact that Joseph, the victim of the slander, was punished for the alleged attempt at rape only by a term of imprisonment says much for the humanity of the Egyptian criminal law of the period; but there is no suggestion in the story that he had any right to redress as plaintiff in a defamation suit.

A few centuries later, the highly equivocal circumstances of the

alleged discovery, by a young princess of the royal house, of the infant Moses on the river bank might have been expected to give rise to much doubtful speculation as to her part in the affair. If there was any such, it has been decently shrouded in silence throughout the ages, until its recent careful analysis by the late Siegmund Freud in his interesting treatise "Moses and Monotheism." But Moses may have suffered from the suspicion in his youth, and this may help to explain the prohibition against defamatory activities in the Ninth Commandment.

Frequent denunciations of slanderers occur in the Psalms and the Prophetic Books of the Old Testament, while in the Apocrypha the story of Susanna and the Elders recounts events which in modern times would have called for recourse to the Slander of Women Act, 1891. Christian literature early began to represent the Devil (Diabolos, the Slanderer) as the incarnation of evil.

Secular literature also is full of such themes. Euripides, in the fifth century B.C., based a dramatic masterpiece upon the same age-old motif. Phædra, the second wife of Theseus, conceived a guilty passion for her stepson Hippolytus. Enraged and rendered desperate by his cold contempt, she slew herself, leaving a lying letter for her husband accusing Hippolytus of attempted violence towards her, with tragic consequences for all

* This Report was published on 20th October, too late for comment in this issue.

concerned. The same story was treated 2,000 years later by the great French dramatist, Racine.

Among Shakespeare's characters the slanderer *par excellence* is Iago; Othello is the deluded husband and Desdemona the innocent victim.

The realisation that "a statement, though literally true, may involve an innuendo which is defamatory and actionable" (*Chapman v. Ellesmere* [1932] 2 K.B. 431) is of later development, as is also the consideration whether "the act complained of, in its necessary implications, was calculated to lower the plaintiff in the estimation of right-thinking members of the community generally" (*Sim v. Stretch* (1936), 80 Sol. J. 703). Perhaps the earliest example of the use of innuendo in art and literature is the

symbolic representation of a pair of stag's horns for the purpose of conveying in a subtle manner, to an unsuspecting husband, that he has been made a "cuckold." Shakespeare, in "King Henry V" shows us the perfect innuendo—the presentation to the young and impetuous king, by the scornful Dauphin of France, of a box of tennis balls—meaning thereby (as the statement of claim might have said) that the plaintiff was of a youthful and frivolous disposition, more fitted to play games than to wage war, and that he was totally unsuited for the business or profession of ruling a State or commanding an army or for any serious occupation whatsoever. The issue was decided upon the field of Agincourt.

A. L. P.

BOOKS RECEIVED

Whillans's Tax Tables, 1948-49. By GEORGE WHILLANS, Fellow of the Institute of Bankers. 1948. London: Butterworth & Co. (Publishers), Ltd. 3s. 6d. net.

Local Councils and the Citizen. "This is the Law" Series. By R. SIMON, M.A., Assistant Solicitor, City of Kingston-upon-Hull. 1948. pp. ix and (with Index) 197. London: Stevens & Sons, Ltd. 5s. net.

Burke's Encyclopædia of War Damage and Compensation. Supplemental Pts. 34 and 35. Edited by H. PARRISH, Barrister-at-Law. 1948. London: Hamish Hamilton (Law Books), Ltd.

Ranking, Spicer and Pegler's Executorship Law and Accounts. Seventeenth Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A. 1948. pp. xxx and (with Index) 439. London: H. F. L. (Publishers), Ltd. 30s. net.

The Companies Act, 1948. By S. W. MAGNUS, B.A., of Gray's Inn, Barrister-at-Law, and MAURICE ESTRIN, Associate of the Society of Incorporated Accountants and Auditors. 1948. pp. xliii and (with Index) 615. London: Butterworth & Co. (Publishers), Ltd. 32s. 6d. net.

Principles of Company Law. By His Hon. ALFRED F. TOPHAM, K.C., Bench of Lincoln's Inn. Eleventh Edition. 1948. pp. lxxiv, 443 and (Index) 49. London: Butterworth & Co. (Publishers), Ltd. 15s. 6d. net.

The Electricity Act, 1947. Reprinted from Butterworth's Annotated Legislation Service. By Sir JOHN DALTON, A.M.I.E.E., F.C.I.S., of Gray's Inn, Barrister-at-Law. 1948. pp. vii and (with Index) 278. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

The Juridical Review. Vol. 60, No. 2. August, 1948. Edinburgh: W. Green & Son, Ltd.

Shaw's Company Guide and Diary for 1949. By GORDON E. MORRIS. 1948. pp. 120. London: Shaw & Sons, Ltd. 8s. 6d. net.

An Outline of Constitutional Law. By W. I. R. FRASER, B.A., LL.B., Advocate, Lecturer in Constitutional Law, University of Edinburgh. Second Edition. 1948. pp. xvi and (with Index) 346. London: William Hodge & Co., Ltd. 18s. net.

The Library of Congress Quarterly Journal of Current Acquisitions. Vol. 5, No. 4. August, 1948. Washington: Library of Congress.

The Trial of German Major War Criminals. Pt. 17. 1948. pp. x and 366. London: H.M. Stationery Office. 6s. net.

National Insurance and Industrial Injuries. By F. N. BALL, LL.B., Solicitor of the Supreme Court. 1948. pp. xvi and (with Index) 508. Leigh-on-Sea: The Thames Bank Publishing Co., Ltd. 50s. net.

Wilson and Heaton on the Income Tax Act, 1945. By H. A. R. J. WILSON, F.C.A., F.S.A.A., and JAMES S. HEATON, A.S.A.A. 1948. pp. xix and (with Index) 312. London: H.F.L. (Publishers), Ltd. 25s. net.

The Children Act, 1948. Edited by A. C. L. MORRISON, C.B.E., Miss M. M. WELLS, M.A., E. ETON, D.S.O., T.D., and L. G. BANWELL. 1948. pp. xii, 169 and (Index) 21. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Notes on District Registry Practice and Procedure. By THOMAS STANWORTH HUMPHREYS, lately Clerk in Charge. District Registry, Birmingham. Seventh Edition. 1948. pp. viii and (with Index) 95. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

The County Court Practice, 1948. Edited by His Hon. Judge EDGAR DALE and BRUCE HUMPHREY, Group Registrar of Croydon, Dorking, East Grinstead, Horsham, and Redhill County Courts. 1948. pp. ccxviii, 1930 and (Index) 160. London: Butterworth & Co. (Publishers), Ltd.; Sweet and Maxwell, Ltd.; Stevens & Sons, Ltd. 60s. net.

The Stock Exchange Official Year Book, 1948. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1948. pp. (with Index) ccxii and 3525. London: Thomas Skinner & Co. (Publishers), Ltd. 120s. net.

Register of Defunct and Other Companies, 1948. Editor-in-Chief: Sir HEWITT SKINNER, Bt. 1948. pp. iv and 432. London: Thomas Skinner & Co. (Publishers), Ltd. 20s. net.

A Treatise on Contemporary Religious Jurisprudence. By I. H. RUBENSTEIN, of the Illinois Bar. 1948. pp. 120. Chicago: The Waldain Press.

Chitty's Treatise on the Law of Contracts. First Supplement to the Twentieth Edition. By BARRY CHEDLOW, of the Middle Temple, Barrister-at-Law. 1948. pp. iv and 15. London: Sweet & Maxwell, Ltd.

The Profits Tax. By A. G. MCBAIN, Chartered Accountant, and ROBERT P. BURNET, Chartered Accountant. 1948. pp. xii and (with Index) 134. London: Sweet & Maxwell, Ltd. 12s. 6d. net.

A Textbook of the English Conflict of Laws. By CLIVE M. SCHMITTHOFF, LL.M.(Lond.), LL.D.(Berl.), of Gray's Inn, Barrister-at-Law. With a Foreword by The Rt. Hon. Lord MACMILLAN, G.C.V.O. Second Edition. 1948. pp. xlviii and (with Index) 461. London: Sir Isaac Pitman & Sons, Ltd. 35s. net.

The National Health Service Act, 1946. By S. R. SPELLER, LL.B., of Lincoln's Inn, Barrister-at-Law. 1948. pp. xii 497 and (Index) 90. London: H. K. Lewis & Co., Ltd. 42s. net.

REVIEWS

Shaw's Guide to the Local Government Act, 1948. By F. H. GLADWIN, A.R.V.A., Valuation Officer to the Edmonton Borough Council. 1948. London: Shaw & Sons, Ltd. 15s. net.

This book sets out the Local Government Act, 1948 (with the exception of those sections solely applicable to Scotland), in a form which is striking and convenient. The words of the sections are followed very closely; in the paragraphs of the book the same numbering is retained; and the marginal headings to the sections are used as bold cross-headings to the corresponding paragraphs. Three examples are given of the calculation of Exchequer grants. At the end of the book there is a large single-sheet chart which summarises in tabular form the provisions of the sections relating to Exchequer grants, dwelling-houses, rating and valuation procedure, repeals and miscellaneous matters. The index has been well prepared but might with advantage have been fuller. It should have been made clear at p. 38 that the definition of "dwelling-house" there appearing does not apply to the expression when used in Pt. V of the Act. This will be found a useful book for ready reference.

The Heralds of the Law. By C. G. MORAN, of the Inner Temple, Barrister-at-Law. 1948. London: Stevens & Sons, Ltd. 17s. 6d. net.

England's law reports, in one form or another, go back to 1066, and it is equally extraordinary and inexplicable that not till 1948 has a comprehensive survey of the art of reporting and its history found its way into legal literature. Here at last it is. The heralds of the law are the law reporters and the author is a veteran member of the fraternity. Considering that their labour furnishes the very tools of the lawyer's trade, it is quite remarkable how little the profession at large appreciates the processes by which the multifarious mass of judicial pronouncements, day by day and year by year, are reduced to workable coherence. The casual observer may think that a law report need be nothing more than a shorthand transcript with a few formal trimmings. In fact, since the judgment and the report of it have totally different objects, a decision, generally involving a dispute of fact as well as law, delivered for the benefit of the parties to the contest, is raw material to be transformed into a record of a point of law for the benefit of lawyers present and to come. Relevance, lucidity and brevity are the key-notes. "The object of a twentieth century law report is the production of an adequate record of a judicial decision on a point of law . . . for subsequent citation as a precedent." All who have to do with the law reports and particularly the judges, whose voices they carry to posterity, would do well to study this book. The importance of precedent in English law is fundamental and here the history, the technique, the problems and the controversies of law reporting, current and past, are clearly, wisely and, one should add, wittily set forth by one to whom intimate association with it has given a deep practical insight into the subject. This book is as important as it is readable.

A Handbook on the Death Duties. By H. ARNOLD WOOLLEY, Solicitor of the Supreme Court. Sixth edition. 1948. London: The Solicitors' Law Stationery Society, Ltd. 27s. 6d. net.

The death duties are perhaps the most difficult branch of taxation law, and yet most solicitors have to advise on the subject every day, not only in probate cases but also in drafting wills and settlements where future incidence has to be taken into account; in addition, death duty points arise in conveyancing practice. Mr. Woolley's book (which has passed through five editions and is already well known) is essentially a desk-book for a busy solicitor, which will give a quick answer to practical questions. It does not set out to be comprehensive, or to replace the standard works of Dymond or Green.

Chapter XVI (mitigating the duties) and chapter XVII (hints on drafting wills) will be found particularly useful. Though it is unwise since retrospective legislation became fashionable to embark on expensive schemes for the large-scale avoidance of duties, it is often possible to achieve a given result by more than one method, and if so it is legally correct to adopt the method which attracts less duty. The heavy incidence of duties (of which the author gives illustrations) is not confined to large estates. We recently saw a case where a small estate of £4,000 had attracted duties of £500 (chiefly legacy duty). Some of this burden could have been avoided if the draftsman of the will had used Mr. Woolley's notes.

It may be useful to draw attention to s. 76 of the Finance Act, 1948 (which brings into charge insurance policies under settlements), and also to the fact that *Re Diplock's Estate* has been reversed on appeal, which may affect the results stated on pp. 131 and 178. These changes came too late to be included in the text.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL INCOME TAX: "BANKING BUSINESS"

Bank of Ceytinad, Ltd., Colombo v. Colombo Income Tax Commissioner

Lord Simonds, Lord Morton of Henryton and
Sir Madhavan Nair. 6th August, 1948

Appeal from the Supreme Court of Ceylon.

The appellants, a company having their head office in Rangoon, had a branch office at Colombo, in Ceylon. The main business of the branch was lending money on promissory notes or mortgage and the management of properties owned by the company in Ceylon. The only current and deposit accounts at material times with the branch were those of a corporation with which the company were closely connected. The branch was mainly financed from its head office. In the material year of assessment the branch credited Rs.53,226 to the head office in Rangoon by way of interest. The company claimed that that sum was deductible in computing the profits of the company for Ceylon income-tax purposes in respect of the profits of the Ceylon branch. The Income Tax Rules, made under s. 90 of the Ceylon Income Tax Ordinance, 1932, provide for a deduction for interest where the "Ceylon branch" of a non-resident bank owes money to branches outside Ceylon. Section 2 defines a banker as a person "carrying on the business of banking." Rule 1 of the Income Tax Rules defines "Ceylon branch" as "the business carried on in Ceylon by any 'non-resident' banker." The Commissioner disallowed the deduction. The Board of Review reversed his decision. The Supreme Court restored the Commissioner's decision, and the company now appealed. Their lordships took time for consideration.

LORD MORTON OF HENRYTON, delivering the judgment of the Board, said that, on the true construction of r. 1 of the Income Tax Rules, the word "business" meant banking business. It was, therefore, necessary to the company's right to the deduction claimed that the business of the branch should be that of banking. The proper test whether the branch was carrying on the business of banking within the meaning of the Ordinance of 1932 was whether it could be described as a company "which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order." The branch did not on the facts come within that definition, and the deduction claimed could not, therefore, be allowed. Appeal dismissed.

APPEARANCES: *King, K.C.*, and *Stephen Chapman (Darley, Cumberland & Co.)*; *Sir David Maxwell Fyfe, K.C.*, and *Hills (Burchells)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

RENT RESTRICTION: TENANT'S TWO HOMES **Langford Property Co., Ltd. v. Tureman and Another**

Lord Greene, M.R., Tucker and Somervell, L.JJ.
29th September, 1948

Appeal from Marylebone County Court.

The second defendant was the tenant and the plaintiff company were the landlords of a flat in London within the Rent Restrictions Acts. The first defendant and his wife lived in the flat as the tenant's guest. The flat was fully furnished with the tenant's furniture. He had also a cottage in the country where his wife and family lived. Owing to his business activities in London the tenant had to spend about two nights a week there. He slept at the flat on those occasions, but rarely took a meal there. The landlords claimed possession, one ground of the claim being that the tenant was not in such personal occupation of the flat as a home as entitled him to claim the protection of the Rent Restrictions Acts. The county court judge held, on the authority of *Skinner v. Geary* [1931] 2 K.B. 546, that as the tenant was not residing in the flat or occupying it as his home and there was no evidence that he ever intended to return to it in order to occupy it as his home, he was not entitled to the protection of the Acts. He therefore made an order for possession. The tenant appealed.

TUCKER, L.J.—LORD GREENE, M.R., and SOMERVELL, L.J., agreeing—said that the fact that the tenant had a house in the country did not prevent other premises which he might use from also being his home for the purposes of the Rent Restrictions Acts. A man's business might require him to be in different parts of the country within a week, and there was nothing to prevent him from having a home in those different places. The county court judge had mis-applied *Scrutton, L.J.'s* judgment in *Skinner v. Geary, supra*. There was no evidence on which he could come to the conclusion that the tenant was not in personal occupation of the flat. Appeal allowed.

APPEARANCES: *Stock (Webb, Justice & Co.)*; *Heathcote-Williams (Stikeman & Co.)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LIBEL: SOURCE OF INFORMATION FOR ARTICLE COMPLAINED OF

Lawson and Another v. Odhams Press, Ltd., and Others

Lord Greene, M.R., and Tucker, L.J. 7th October, 1948
Appeal from Jones, J., in Chambers.

The plaintiffs claimed damages for libel in respect of a newspaper article of which the second defendant was the signed author. The first defendants were the publishers and the third defendant the managing editor of the newspaper. The defendants

pleaded fair comment. The plaintiffs sought to administer to the author an interrogatory as to the sources of information on which he had based statements in his article. Jones, J., reversing the master, disallowed the interrogatory on the ground that the special rule of practice which protected the proprietor and publisher of a newspaper extended to protect the writer of a signed article in a newspaper. The author swore an affidavit in the course of the proceedings before the judge, and, by permission, was cross-examined, giving evidence as to the scope of his authority in obtaining information. The plaintiffs appealed.

TUCKER, L.J., said that if Jones, J., had disallowed the interrogatory purely on the ground that he considered as a matter of law that the author was entitled to the protection which had been accorded to proprietors and publishers of newspapers, the case would have required further argument. The matter, however, was one of pure discretion, and there was no indication that he had not exercised that discretion, or that he had not exercised it properly. It was open to the judge to decide, as a matter of discretion, that the interrogatory should not be administered to a person in the author's position. To hold otherwise would have the effect of nullifying the usefulness of the rule of practice as to proprietors and publishers of newspapers which existed.

LORD GREENE, M.R., agreeing, said that whether cross-examination should be allowed was a matter of discretion, but he hoped that in interlocutory proceedings an order for it would not be made in the absence of special circumstances. Appeal dismissed.

APPEARANCES: Neil Lawson (*Dare* with him) (*Kimbers & Co., for Canning & Kyrke, Chard*); *Sir Valentine Holmes, K.C., and J. Davidson (Simmons & Simmons).*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

STATUTORY TENANCY: TENANT'S INVALID NOTICE TO QUIT

King's College, Cambridge v. Kershman and Others

Lord Greene, M.R., Tucker and Somervell, L.JJ.

7th October, 1948

Appeal from Willesden County Court.

The plaintiffs let a flat within the Rent Restrictions Acts to the first defendant for three years from 29th September, 1942, at the expiration of which the tenant held over as a statutory tenant. The other defendants, his wife and her parents, were living with him in the flat. In 1946 the tenant left the flat after domestic differences had occurred between him and his wife. After he had taken unsuccessful proceedings designed to compel the other defendants to leave the flat, the tenant, in March, 1947, handed over the keys to the landlords' agent with a notice stating that he was giving up possession of the flat on that day. The other defendants remained in occupation of the flat, and in October, 1947, the landlords brought the present proceedings against them and the tenant for possession. The county court judge held that the notice given by the tenant was invalid because not in compliance with s. 15 (1) of the Rent, etc., Act, 1920, and that the tenant was accordingly still in occupation of the flat by his wife. He made an order for possession in three months against all the defendants. The tenant appealed because of his liability for rent for that further period.

LORD GREENE, M.R.—TUCKER and SOMERVELL, L.JJ., agreeing—said that, when a tenant held over as statutory tenant after expiry of a fixed term, the statutory tenancy could only be validly determined by the three months' notice prescribed by s. 15 (1), apart from any contractual arrangement with the landlord for surrender. As the notice given had been invalid, and since the husband remained responsible for his wife's maintenance, the judge exercised a proper discretion in ordering possession to be given in three months notwithstanding that that involved extension for that period of the husband's liability for rent. Appeal dismissed.

APPEARANCES: *Levine (Withers & Co.)*; *H. J. Phillimore (Montague Adler & Arnold).*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

PENSIONS: MINISTER BOUND BY WAR OFFICE DECISION

Robertson v. Minister of Pensions

Denning, J. 11th October, 1948

Appeal from a pensions appeal tribunal.

In April, 1941, the Director of Personal Services at the War Office wrote to the claimant, an officer in the Army, that the

disability from which he was suffering was accepted as attributable to his military service. On the faith of that assurance, the claimant took no steps to obtain independent medical testimony. The Minister of Pensions was not consulted before the letter of April, 1941, was written. That Minister rejected the claimant's application for a pension, and the tribunal upheld his decision. The claimant now appealed.

DENNING, J., said that the letter of April, 1941, would, if it was to be effective, have to be binding on the respondent Minister because the Royal Warrant of 1939 had transferred to him the entire administration of disablement claims in respect of service after 2nd September, 1939. The letter was binding and acted as an estoppel because the claimant had refrained from a certain course of action on the strength of it. The doctrine that estoppel did not bind the Crown had been exploded. The defence of executive necessity was of limited scope and only availed the Crown where there was an implied term to that effect. It did not apply here, the letter from the War Office being clear and explicit. Finally, the Minister of Pensions was bound by the letter from the War Office. The claimant was entitled to assume that that department had consulted any other department concerned. It could not be suggested that, having received such an assurance, he was not entitled to act on it. The War Office itself was bound by it, and as it was an agent of the Crown the latter was also bound. As the Crown was bound by it so were other departments, being also mere agents of the Crown. Appeal allowed.

APPEARANCES: *Crispin (Culross & Trelawny)*; *H. L. Parker (Treasury Solicitor).*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TO-DAY AND YESTERDAY

LOOKING BACK

EDWARD Smith, the second son of a member of the Middle Temple, was himself admitted on 23rd October, 1627, and called to the Bar eight years later. He went to Ireland in 1662 as a Commissioner of the Court of Claims constituted by the Act of Settlement. He was knighted by the King and in 1663 became Member of Parliament for Lisburn. In 1665 he was appointed Chief Justice of the Irish Court of Common Pleas, to the considerable disappointment of Alexander, one of the puisne judges of the court, and of Kennedy, one of the Barons of the Exchequer, both of whom claimed a prior right, the former on the ground that he had been actually promised the place and the latter on the ground of the hazards he had to run in assisting to restore Charles II to the throne. In addition to the chief justiceship, Smith was in 1666 appointed Chief Commissioner of the Court of Claims, as constituted by the Act of Explanation. Early in 1669 he was obliged to bring its sittings to a close but only at the last possible moment on the last possible day, delivering at midnight "a short speech by way of taking leave and justifying the impartial proceeding of the commissioners all along in executing the Act to the best of their skill and judgment." The Act of Settlement, under which the Court of Claims was constituted, was an Irish statute (for Ireland then had a separate Parliament), a sequel to the Civil War and the Commonwealth troubles. It was passed "for the better execution of His Majesty's declaration for the settlement of the Kingdom of Ireland and satisfaction of the several interests of adventurers, soldiers and others, his subjects therein." Smith resigned the chief justiceship at the close of 1669.

LATIN INTERLUDE

THERE was a Latin interlude at Bristol recently when Judge Wethered expressed a preference for adjourning an application "generally" to adjourning it *sine die*, since after all, the former was a free translation of the latter, "The truth is," he said, "I am a very bad Latin scholar. That is why I like it in plain English. Another reason is, I never know how to pronounce it. I am always afraid of being pulled up for mispronunciation. I lost a scholarship because of that, years ago." Undoubtedly the Latin tradition is fading from the legal world and we are a long way from the spirit of Mr. Justice Whitelock in the time of Charles I, who once at the Oxford Assizes, when some distinguished foreigners were in court, "repeated the heads of his charge to them in good and elegant Latin and thereby informed the strangers of the ability of our judges and the course of our proceedings in law and justice." Nevertheless, some in the legal world still keep the lamp of scholarship trimmed, notably Lord Simon, and in May, 1937, when seven Wykehamist legal luminaries, headed by Lord Thankerton, were honoured in the 300 year old ceremony of Ad Portas, the Latin address

of the Prefect of Hall was fluently responded to in the same tongue by the noble and learned lord, who was described as "speaking much as an ancient and humorous Roman might be supposed to speak if he had been educated at Winchester." No doubt any one of the other six could have emulated the performance, but in addition to a Winchester education Lord Thankerton had behind him a Scottish legal training and in preparation for the Bar in Edinburgh, actual oral use of the Latin tongue still plays an essential part.

ASSIZE LATIN

ONE test which tends to keep judges of assize up to the mark in their scholarship is the recurrent danger of having to answer Latin letters from schoolboys petitioning for a holiday in traditional form. It happens at Shrewsbury and the late Lord Justice MacKinnon gives an amusing account of the composition of his reply in 1926 to such a letter received after he had moved on to Stafford: "When I received it the circumstances were unfavourable to Latinity. My marshal, *horresco referens*, had taken his degree at Cambridge in what I believe is called the Engineering Tripos. My colleague refused to help me, his marshal pretended to be unable. From what I saw of Stafford I doubt if it contained a Latin dictionary. So I had to essay a reply unaided. But, however doggish the result, my young friend would not scruple to hand it to the headmaster; and he would hardly deprive them of their half-holiday as a punishment for my errors." In 1928, at Bedford, in a like emergency, MacKinnon's marshal, this time from Trinity College, Oxford, was no use at all, because he had read law. However, again on the merits of his own unaided efforts, the judge received from the headmaster a compliment on his polished Latin.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL]

Legitimation and Bigamous Marriages

Sir,—Whilst the writer was in South Africa recently a case came to his knowledge in which an Englishwoman then resident there applied to the Judge President of the Supreme Court at Durban for a declaration that her bigamous marriage should be declared null and void and that the child of the bigamous marriage should be declared legitimate, which declarations were granted and the mother of the child was made the legal guardian.

It appears that the declaration as to the legitimacy of the child was made under Roman-Dutch law, which provides that where the wife of a bigamous marriage believes that the marriage was a valid one, the court will make such a declaration. The procedure is that before the legitimacy order can issue an advertisement must be inserted in a newspaper in the town or county where the man is resident calling upon him to show cause why the declaration should not be granted.

It seems a pity that when the Legitimacy Act, 1926, was passed the law officers of the Crown did not then include in such Act a section giving the mother of the child of a bigamous marriage the right to apply for a declaration on the same grounds as those which now pertain in South Africa.

Doubtless many of your readers have acted for women who have been tricked into a bigamous marriage and who have had a child by the bigamous husband. The writer has recently dealt with one such.

Is this not one of the many instances where the English law lags behind the laws of the Commonwealth? Such a humanising Act if now introduced into Parliament would surely receive the support of all parties.

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NOTES AND NEWS

Honours and Appointments

The King, on the recommendation of the Secretary of State for Scotland, has approved the appointment of Mr. J. F. STRACHAN, K.C., to be one of the senators of His Majesty's College of Justice in Scotland to fill the vacancy caused by the resignation of Lord Stevenson.

Mr. A. H. HAMILTON-HILL has been appointed Deputy Coroner for East Middlesex. He was admitted in 1930.

Mr. K. B. DYER, prosecuting solicitor for the Sheffield Town Clerk's Department, has been appointed Assistant Solicitor in the Liverpool Town Clerk's Department. He was admitted in 1947.

Mr. H. D. B. EADEN has been appointed head of the legal department of the Dunlop Rubber Co., Ltd. He was admitted in 1947.

Notes

THE UNITED LAW SOCIETY

The United Law Society has resumed its debates, which are held in the Barristers' Refreshment Room, Lincoln's Inn (under Lincoln's Inn Hall), on Mondays, at 7.15 p.m.

Barristers, solicitors, bar students, articulated clerks and matriculated students of any university studying for a law school or a degree in law or who have passed the examination in a law school or the examination qualifying them for a law degree are eligible for membership.

Ladies or gentlemen wishing to become members are asked to communicate with one of the secretaries, Mr. C. H. Pritchard, Palace Chambers, Bridge Street, S.W.1 (Tel.: Whitehall 6891), or Miss F. L. Berman, 1 Southampton Place, W.C.1 (Tel.: Museum 8134).

At a meeting of the Law Students' Debating Society, held at The Law Society's Court Room, on Tuesday, 12th October, 1948 (Chairman, Miss R. Eldridge), the motion "That the case of *Re Coats Trusts; Coats and Another v. Gilmore and Others* [1948] 1 All E.R. 521 (C.A.), was wrongly decided," was carried by the casting vote of the chairman, there being twelve members and six visitors present.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

The directors of the Solicitors' Law Stationery Society, Ltd., have paid an interim dividend of 4 per cent., less income tax, on the increased capital of £150,000 in respect of the year ending 31st December, 1948.

Wills and Bequests

Mr. W. R. Philpot, solicitor, of Guildford, left £22,333.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 2251. **Motor Vehicles** (Driving Licences) (Amendment) (No. 3) Regulations. October 7.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE CHANCERY DIVISION

Date	ROTA OF REGISTRARS IN ATTENDANCE ON		EMERGENCY		APPEAL		Mr. Justice		Mr. Justice	
	ROTA		COURT I		VAISEY		ROXBURGH		Business as listed	
Mon., Oct. 25	Mr. Adams	Mr. Hay	Mr. Farr	Mr. Farr	Mr. Farr	Mr. Farr	Mr. Farr	Mr. Farr	Mr. Farr	Mr. Farr
Tues., " 26	Mr. Andrews	Farr	Adams	Adams	Adams	Adams	Adams	Adams	Adams	Adams
Wed., " 27	Jones	Adams	Adams	Adams	Adams	Adams	Adams	Adams	Adams	Adams
Thurs., " 28	Reader	Adams	Jones	Jones	Jones	Jones	Jones	Jones	Jones	Jones
Fri., " 29	Hay	Jones	Reader	Reader	Reader	Reader	Reader	Reader	Reader	Reader
Sat., " 30	Farr	Reader	Hay	Hay	Hay	Hay	Hay	Hay	Hay	Hay
GROUP A										
Mr. Justice Mr. Justice Mr. Justice Mr. Justice										
WYNN PARRY ROMER JENKINS HARMAN										
Business as listed										
GROUP B										
Non-Witness Witness Non-Witness Non-Witness										
Mon., Oct. 25	Mr. Reader	Mr. Adams	Mr. Adams	Mr. Adams	Mr. Adams	Mr. Adams	Mr. Adams	Mr. Adams	Mr. Adams	Mr. Adams
Tues., " 26	Hay	Adams	Jones	Jones	Jones	Jones	Jones	Jones	Jones	Jones
Wed., " 27	Farr	Jones	Reader	Reader	Reader	Reader	Reader	Reader	Reader	Reader
Thurs., " 28	Adams	Reader	Hay	Hay	Hay	Hay	Hay	Hay	Hay	Hay
Fri., " 29	Adams	Hay	Farr	Farr	Farr	Farr	Farr	Farr	Farr	Farr
Sat., " 30	Jones	Farr	Adams	Adams	Adams	Adams	Adams	Adams	Adams	Adams

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